

Law Offices

DOCKET FILE COPY ORIGINAL

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

ORIGINAL

Annapolis	New York
Atlanta	Northern Virginia
Bethesda	Orlando
Boston	Portland
Bradenton	Providence
Chicago	St. Petersburg
Fort Lauderdale	San Antonio
Jacksonville	San Francisco
Lakeland	Seattle
Los Angeles	Tallahassee
Melbourne	Tampa
Miami	West Palm Beach
International Offices:	
Caracas*	São Paulo
Mexico City	Tel Aviv*
Rio de Janeiro	Tokyo
* Representative Office	

January 4, 2002

ARTHUR B. GOODKIND
202-457-1815

Internet Address:
agoodkin@hklaw.com

VIA CAPITAL FILING SPECIALISTS

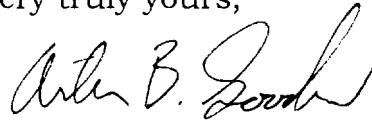
Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Salas:

Transmitted herewith, on behalf of Outlet Broadcasting, Inc., are an original and nine copies of its "Comments of Outlet Broadcasting, Inc." filed in connection with MM Docket No. 01-306.

In the event there are any questions, please communicate with the undersigned.

Very truly yours,



Arthur B. Goodkind

Enclosures

cc(w/enc:) Pamela Blumenthal, FCC

No. of Copies rec'd
List ABCDE

0+9

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
JAN - 4 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.622(b),) MM Docket No. 01-306
Table of Allotments) RM- 10152
Digital Television Broadcast Stations.)
(Hartford, Connecticut))
)
To: Chief, Mass Media Bureau)

COMMENTS OF OUTLET BROADCASTING, INC.

Outlet Broadcasting, Inc. ("Outlet"), by its attorneys, hereby files its comments in opposition to the Commission's proposal to allot digital television channel 31 to Hartford, Connecticut, for use as the DTV transition channel by television station WTIC-DT. This allotment has been proposed in response to a request filed by Fox Television Stations, Inc. ("Fox") and has been supported by the licensee of WTIC-TV, Tribune Television Corporation ("Tribune").

Outlet is the licensee of NTSC television station WVIT, New Britain, Connecticut, which operates from a transmitter site on Rattlesnake Mountain, near New Britain. Outlet opposes the proposed Channel 31 allotment because a WTIC-DT Channel 31 operation would impermissibly increase the already substantial interference received by WVIT within its normally protected service area. In the event that the Commission should nonetheless decide to make the Channel 31 allotment, Outlet requests that such an action be conditioned so as to require (a) that any Channel 31 station operator employ precision frequency

control for its pilot carrier frequency and (b) that any Channel 31 operation remain substantially co-located with WVIT.

I. The Proposed Channel Allotment Should Not Be Made.

WVIT's present analog operation on Channel 30 is already severely compromised. Even before the allotment proposed here, 13.2% of the population within WVIT's normally protected service area is affected by interference. Indeed, WVIT is one of only 15 NTSC stations in the United States that are already subject to more than 10% interference. In its Public Notice of August 10, 1998, "Additional Processing Guidelines for Digital Television (DTV), Ref. No. 84889 ("1998 Public Notice"), such stations were included in an attached list under the heading: "NTSC Stations That Are Not Subject To Additional De Minimis Interference Because Percent Loss Is More Than 10 Percent."

In the Engineering Statement submitted with its Supplement to Petition for Rule Making, Fox concedes that WTIC-DT, operating as proposed from its transmitter site on Rattlesnake Mountain with an ERP of 500 kw and an antenna height of 492 meters above average terrain, will result in additional calculated interference to WVIT. Fox and Tribune take the position, however, that the additional interference does not matter because it would affect very slightly less than 0.05% of the population within WVIT's normally protected service area and should therefore be rounded down to zero.

Such a rounding-down procedure may not be used in the case of interference to a station such as WVIT, which is already subject to more than 10% interference. Rounding down may be employed in determining compliance with

the requirement that a new DTV allotment may not cause more than 2% interference to an existing station, but the Commission has stated explicitly that the same practice may not be followed in determining compliance with the other prong of the de minimis test, which is the requirement that no new interference be caused to a station that already receives cumulative interference affecting 10% or more of its service area population.¹ In the 1998 Public Notice , supra, the Commission stated at p.3:

In general, interference to such stations [including stations affected by changed allotments] affecting less than 2% of the population they serve is considered to be de minimis. However, any interference is considered unacceptable (there is no amount considered to be de minimis) if the station to be protected already is receiving interference to more than 10 percent of the population it would otherwise serve. . .

The 1998 Public Notice then provided the following illustrative example at page 8:

Thus, for example, interference to 2.04% of a station's population will be considered de minimis unless it exceeds the 10% threshold.

There is a sound policy basis for this distinction. Any station receiving interference affecting 10% or more of its population already has a very seriously impaired service area. The Commission therefore established an absolute limit, deeming any additional interference to such a station to be “unacceptable.” 1998 Public Notice, supra. A station receiving less than 10% interference, on the other hand, has not yet reached this “unacceptable” level. Such a station may under the Rules be subjected to multiple additional increments of interference of up to 2% each from different stations just so long as the total population affected by all of the increments together, including all of the population above the 2% limit

¹ Section 73.623 (c) (2) of the Commission's Rules.

disregarded in individual station cases owing to rounding down, does not breach the absolute 10% threshold. In contrast, any use of rounding in the case of a station already at or above the 10% threshold simply permits interference to more people above the threshold. Should such rounding be permitted in the case of more than one new interfering signal, the total of the incremental interference thus permitted may quickly come to equal 0.1%. Indeed, that would be true in this case if only .007% additional interference were to be received from any other station.

The importance of an absolute limit is of particular significance in this case because the cumulative impact of the interference from the proposed Channel 31 allotment has been calculated to be as low as 0.043% only because areas of Channel 31 interference deemed to be “masked” by pre-existing interference from other stations have been excluded from the calculation. Without such masking, as shown in the attached Engineering Statement, the new interference from Channel 31 would affect 3,323 persons within WVIT’s service area, not the 1,854 persons indicated in Fox’s Supplement to Petition for Rulemaking. That number, rounded, would amount to 0.1% new interference, an impermissible number.

The calculation of interference caused by one station to another simply expresses a statistical probability that such interference will occur. See attached Engineering Statement. In the real world, however, the calculated pre-existing interference to WVIT from other stations is never constant and is not the same for all viewers within such predicted areas of interference. The interference may vary over time, with different weather conditions, and according to the exact location and antenna orientation of a viewing household. As a practical matter, the

addition of a new interfering signal from WTIC-DT will certainly, at many locations and at some times, cause new interference to be experienced in areas in which there is presently calculated to be interference from other stations. As the Commission has stated in the fully analogous FM context:

Adding an interfering signal to the area [an area already predicted to receive interference from other stations] will clearly diminish the probability of satisfactory reception in the area.²

We do not suggest that the Commission should change here its standard methodology under which areas of pre-existing interference may be disregarded in calculating incremental interference to a station. However, the fact that adding a new interfering signal from WTIC-DT in such “masked” areas will “clearly diminish the probability of satisfactory reception in the area,” as stated in Greater Media, supra, provides another strong policy basis for insisting on an absolute prohibition of any new interference within the service area of a station such as WVIT already calculated to receive interference affecting more than 10% of the population in its service area. The Commission has never yet, to our knowledge, permitted the 10% threshold to be breached in any case since adoption of the 2%/10% de minimis standard. It should not now start down such a path.

² *Greater Media Radio Company, Inc.*, 17 CR 941, 15 FCC Rcd 7090 (1999), at paragraph 21. See also *Board of Education of City of Atlanta*, 11FCC Rcd 7763, 7766 (1996).

II. At The Least, The Commission Should Condition Any Channel 31 Allotment On A Precise Frequency Control Requirement And On A Requirement That WTIC-DT Remain Substantially Co-located With WVIT.

In the event that the Commission should nonetheless decide to make the Channel 31 allotment that Fox and Tribune have requested, it should do so only under two explicit conditions.

First, because the potential for interference from Channel 31's main carrier to the WVIT Channel 30 audio carrier is substantial, the Commission should, pursuant to Section 73.622(g)(1) of its Rules, designate any Hartford Channel 31 allotment with a "c." This will require any WTIC-DT licensee to minimize the potential for interference to WVIT's audio carrier by maintaining the WTIC-DT pilot carrier frequency 5.082138 MHz above the WVIT carrier frequency. See attached Engineering Statement. Although such a "c" designation would normally be required in circumstances such as these, there was no proposal to do so in the Commission's Notice of Proposed Rule Making.

Second, the Commission should require that Tribune or any successor licensee of WTIC-DT maintain a transmitter site that is substantially co-located with that of WVIT so long as WVIT continues to broadcast either an NTSC signal or a digital signal on Channel 30.

WVIT and WTIC-TV presently have transmitter sites that are separate but which are located in reasonably close proximity on Rattlesnake Mountain, near New Britain. The licensee of WEDH-TV, which will operate its DTV facility on Channel 32, has also proposed, in Comments filed in this proceeding, to locate its

DTV station at the Tribune Rattlesnake Mountain site so as to minimize adjacent-channel interference between those two stations.

Substantial co-location is extremely important if first adjacent-channel interference to WVIT's analog operation is to be minimized. As the Commission observed in its Memorandum Opinion Order on Reconsideration of the Sixth Report and Order on Digital Television, 13 FCC Rcd 7418, at paragraph 94:

"Adjacent channel signals from co-located or closely-located sources tend to be highly correlated since the signals travel over the same or nearly the same path and are affected by the same propagation and weather conditions." Owing to this factor, the desired to undesired ratios between such signals tend to be relatively constant and interference between co-located adjacent channel stations tends to be less than between adjacent channel stations that are not co-located. See attached Engineering Statement.

Tribune's present proposal is to locate its DTV transmitter on Rattlesnake Mountain, in substantial co-location with WVIT's transmitter. It is impossible to predict the future, however, and it is not unreasonable to postulate that Tribune or a successor licensee could at some point decide that it would be in its economic interest to move to one of several other transmitter sites used by stations in the Hartford/New Haven market. Such a move would further exacerbate the already significant interference that a Channel 31 WTIC-DT operation would cause to WVIT. Accordingly, the Commission should condition any such allotment on a requirement that WTIC-DT's transmitter site be restricted to Rattlesnake Mountain, near New Britain. Any such site on Rattlesnake Mountain would

continue to insure substantial co-location with WVIT on Channel 30 and with WEDH-DT on Channel 32.

Conclusion

The Commission should not make the allotment it has proposed because it would breach the absolute 10% cumulative interference standard in Section 73.623(c)(2) of the Rules with respect to WVIT, which is already subject to a 13.2% population loss owing to interference. In the event the Commission nonetheless decides to make the Channel 31 allotment, it should do so only under the two conditions specified above.

Respectfully submitted,

OUTLET BROADCASTING, INC.



Arthur B. Goodkind

HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, NW
Suite 100
Washington, D.C. 20006
(202) 457-1815
agoodkin@hklaw.com

Its Attorneys

January 4, 2002

CERTIFICATE OF SERVICE

I, Naja Gamble-Wheeler, of Holland & Knight LLP, 2099 Pennsylvania Ave., NW, Suite 100, Washington, DC 20006, do hereby certify that a copy of the foregoing "Comments of Outlet Broadcasting, Inc." was served on this 4th day of January, 2002, via hand delivery or by first class mail, to the following parties:

Pamela Blumenthal*
Federal Communications Commission
Room 2-A762
445 12th Street, SW
Washington, DC 20554

John Wells King, Esq.
Garvey Schubert & Barer
1000 Potomac Street, NW
5th Floor, Flour Mill Building
Washington, DC 20007

John C. Quale
Skadden Arps Slate Meagher & Flom, LLP
1440 New York Avenue, NW
Washington, DC 20005

Thomas P. Van Wazer
Sidley Austin Brown & Wood
1501 K Street, NW
Washington, DC 20005

Steven C. Schaffer
Schwartz Woods & Miller
1350 Connecticut Avenue, NW
Suite 300
Washington, DC 20036


Naja Gamble-Wheeler

* By hand delivery

**DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND**

**ENGINEERING EXHIBIT
IN SUPPORT OF COMMENTS OF
OUTLET BROADCASTING, INC.
MASS MEDIA DOCKET NUMBER 01-306
AMENDMENT OF SECTION 73.622(b),
TABLE OF ALLOTMENTS,
DIGITAL TELEVISION BROADCAST STATIONS
HARTFORD, CONNECTICUT**

ENGINEERING STATEMENT

This Engineering Exhibit has been prepared on behalf of Outlet Broadcasting, Inc. (herein Outlet), licensee of television station WVIT, New Britain, Connecticut, in support of comments regarding the FCC Notice of Proposed Rule Making in Mass Media Docket Number 01-306. The proponent of the petition for rule making, Fox Television Stations, Inc. (Fox) requests substitution of DTV channel 31 for DTV channel 5 for Tribune Television Corporation's (Tribune) station WTIC-DT at Hartford, Connecticut. WVIT is a NTSC station licensed for operation on channel 30, first adjacent to the proposed channel 31 DTV allotment at Hartford.

The proposed allotment of DTV channel 31 to Hartford is predicted to cause new interference to the existing WVIT operation. An analysis made pursuant to the procedures in FCC Office of Engineering Technology (OET) Bulletin No. 69 predicts that 1,854 persons within the WVIT noise-limited service area will receive new interference from the proposed channel 31 DTV allotment. The new interference corresponds to 0.043 percent of the population within the WVIT noise-limited service area. Based on the FCC's initial DTV allotments, WVIT is already predicted to receive interference to 13.2 percent of

DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND

Engineering Statement
Outlet Broadcasting, Inc.
MM Docket No. 01-306

Page 2

the population within the WVIT noise-limited contour. As a result, WVIT is included on a list of stations of 15 stations in FCC Public Notice, *Additional Application Processing Guidelines For Digital Television (DTV)* under the heading "Not Subject To Additional Interference Because Percent Loss Is More Than 10 Percent".

The WVIT population affected by interference from the proposed channel 32 DTV allotment would be calculated to be a larger number but for the fact that much of the interference area is masked by other predicted interference from existing NTSC and DTV stations. The FCC's interference model assumes that predicted interference to an area results in the absence of service for the desired station and subsequent interference from other stations is not considered. In reality, propagation and interference are functions of statistical probabilities. Multiple stations predicting interference to a desired station in a particular area serve only to increase the probability of interference in that area. In the instant case, the proposed DTV channel 31 allotment is predicted to cause interference to 3,323 persons within the WVIT noise-limited contour when masking is not considered. This is nearly twice the predicted interference of 1,854 persons when masking is considered. While the FCC's assumptions regarding the use of masking interference are reasonable at relatively low interference levels, stations subject to receiving high levels of predicted interference only provide greater opportunities for other stations to increase the likelihood for interference. In short, the more interference a station is predicted to receive, the more interference other stations can cause.

DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND

Engineering Statement
Outlet Broadcasting, Inc.
MM Docket No. 01-306

Page 3

The proposed channel 31 DTV allotment is of particular concern because DTV operation is proposed on the upper adjacent channel to WVIT. In the Sixth Report and Order in MM Docket 87-268, the FCC recognized the concerns of using channels adjacent to NTSC stations for DTV allotments. To minimize the potential impact, the FCC collocated adjacent NTSC and DTV channels to the extent possible. As recognized by the FCC in the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, collocation or near collocation permits for close correlation between the desired and undesired signals and minimizes the potential for interference between adjacent channel stations.

WVIT and the allotment reference coordinates for the proposed channel 31 DTV allotment are essentially collocated, being separated by a distance of 0.3 kilometer. However, it is possible that appreciable separation of WVIT and WTIC-DT could cause prohibited interference to WVIT or force a reduction in the channel 31 DTV facilities to the extent that that coverage on channel 31 would be significantly limited.

In the Sixth Report and Order, the FCC took other steps to minimize the potential for interference from DTV allotments on upper adjacent channels to NTSC stations. Included in these is the requirement that upper adjacent DTV stations maintain the pilot carrier frequency of the DTV signal 5.082138 megahertz above the visual carrier frequency of a lower adjacent channel NTSC station. The Notice of Proposed Rule Making in MM Docket No. 01-306 does not specify the proposed channel 31 DTV allotment with the "c" designation that

DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND

Engineering Statement
Outlet Broadcasting, Inc.
MM Docket No. 01-306

Page 4

would require WTIC-DT to maintain precision frequency offset with the lower first adjacent channel NTSC operation of WVIT pursuant to Section 73.622(g)(1) of the FCC Rules. The absence of this requirement increases the likelihood of interference from the proposed channel 31 DTV facility to the aural carrier of WVIT, which is only 24 kilohertz below the boundary of channels 30 and 31.

CONCLUSIONS

The proposed allotment of DTV channel 31 at Hartford, Connecticut, will result in an increase in interference to the existing first adjacent channel operation of WVIT which is presently predicted to receive interference in excess of the cumulative 10 percent *de minimis* limit prescribed by the FCC Rules. Additionally, the FCC has not imposed any requirements on the proposed channel 31 DTV allotment that would minimize the potential for interference to WVIT. These should include a requirement that a channel 31 DTV facility be substantially collocated with WVIT and that the channel 31 DTV allotment maintain precise frequency control relative to the WVIT carrier.


Alan R. Rosner, P.E.



January 4, 2002